

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

C. E. BURNS

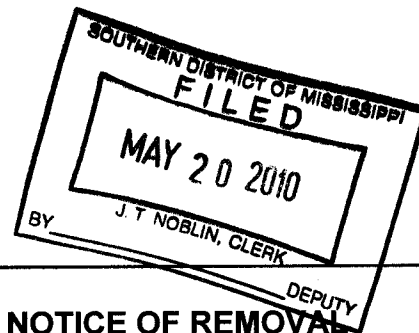
PLAINTIFF

V.

TRINITY MISSION HEALTH &  
REHAB OF CLINTON, LLC

CAUSE NO. 3:10CV294DPJ-FKB

DEFENDANT



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**NOTICE OF REMOVAL**

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Defendant, Trinity Mission Health & Rehab of Clinton, LLC, (hereafter "Defendant" or "Trinity Mission"), by and through its undersigned counsel, appears for the purpose of presenting this Notice of Removal of the cause described below from the Circuit Court of the First Judicial District of Hinds County, Mississippi, to the United States District Court for the Southern District of Mississippi, Jackson Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and states as follows:

**I. JURISDICTION AND VENUE**

1. The above-styled action was originally commenced by the Plaintiff, C. E. Burns, on February 16, 2010, by the filing of a Complaint in the Circuit Court of the First Judicial District of Hinds County, Mississippi, styled: *C. E. Burns v. Trinity Mission Health & Rehab of Clinton, LLC*, bearing Cause No. 251-10-111CIV.

2. This Court has jurisdiction over this matter, and this matter is properly removed to this Court pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C. § 1446.

3. The United States District Court for the Southern District of Mississippi, Jackson Division is the proper venue for this matter since the matter is removed from the Circuit Court of the First Judicial District of Hinds County, Mississippi.

4. Less than thirty (30) days, as calculated under applicable law, have elapsed since April 21, 2010, when Plaintiff served the registered agent of Trinity Mission Health & Rehab of Clinton, LLC, Defendant, at which time this case first became removable. Further, this removal has been accomplished within one (1) year after commencement of the action so as to be timely within the provisions of 28 U.S.C. § 1446 (b).

## **II. DIVERSITY OF CITIZENSHIP JURISDICTION**

5. This action is properly removed to this Court pursuant to 28 U.S.C. §§ 1332 and 1441, since the proper parties to this matter are of entirely diverse citizenship, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

### **A. PARTIES**

6. At the time of the filing of the Complaint and at all times pertinent to this removal, the Plaintiff was and is an adult resident citizen of Rankin County, Mississippi.

7. At the time of the filing of the Complaint and at all times pertinent to this removal, Defendant Trinity Mission Health & Rehab of Clinton, LLC is a foreign limited liability company organized under the laws of the State of Delaware, whose members are resident citizens of states other than Mississippi, and which was served with process on April 21, 2010.

**B. AMOUNT IN CONTROVERSY**

8. The amount in controversy in this civil action exceeds \$75,000.00, exclusive of costs and interest, as evidenced by the face of the Plaintiff's Complaint. Plaintiff is seeking damages in this medical malpractice action including medical expenses, pain and suffering, physical impairment, loss of enjoyment of life and other damages in his Complaint.

9. Accordingly, this civil action is one in which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332 since it is a civil action between parties of diverse citizenship with the amount in controversy in excess of \$75,000.00, exclusive of costs and interest, and this action is thereby being removed to this Court pursuant to 28 U.S.C. § 1441.

**III. FEDERAL QUESTION AND/OR  
SUPPLEMENTAL JURISDICTION**

10. In addition, this Court has federal question and/or supplemental jurisdiction under 28 U.S.C. 1331 and 9 U.S.C. 4 (Federal Arbitration Act) as the controversy in question is governed by an Alternative Dispute Resolution Agreement which requires arbitration and is enforceable pursuant to 9 U.S.C. 4.

11. Even assuming arguendo that certain alleged claims by the Plaintiff are conceivably not claims over which this Court has original jurisdiction, this Court does have original jurisdiction over most claims and, pursuant to 28 U.S.C. § 1367, this Court "shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy". See 28 U.S.C. § 1367.

12. Consequently, regardless of any attempt by the Plaintiff to parse any purported claims in this matter, this Court must assume jurisdiction over the entire matter.

#### IV. CONCLUSION

13. A copy of all process, pleadings and orders served upon the removing Defendant in this action is attached hereto as Exhibit "A".

14. In compliance with 28 U.S.C. § 1446, the Plaintiff, through counsel, is being provided with a copy of this Notice of Removal, and a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of the First Judicial District of Hinds County, Mississippi.

15. Pursuant to this removal and the clear provisions of 28 U.S.C. § 1446, there should be no further proceedings in the Circuit Court of the First Judicial District of Hinds County, Mississippi.

WHEREFORE, THE ABOVE PREMISES CONSIDERED, Trinity Mission Health & Rehab of Clinton, LLC requests this Court to properly assume full jurisdiction over this matter as provided by law.

Respectfully submitted,

TRINITY MISSION HEALTH & REHAB OF  
CLINTON, LLC

By: 

LISA WILLIAMS McKAY (MSB #9678)  
WILLIAM W. McKINLEY, JR. (MSB #9987)

OF COUNSEL:

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Jackson, MS 39205-0750  
Telephone: 601-969-1010  
Telecopier: 601-969-5120

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this day served a true and correct copy of the above and foregoing instrument by causing a copy of same to be mailed, postage prepaid, to the following counsel of record at the address(es) shown:

Robert C. Boyd  
Robert Boyd and Associates, PLLC  
Post Office Box 1297, Clinton, MS 39060

Barbara Dunn  
Hinds County Circuit Clerk  
Post Office Box 327  
Jackson, Mississippi 39205

This the 20<sup>th</sup> day of May, 2010.

  
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WILLIAM W. McKINLEY, JR.